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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,580	04/18/2005	Josef Pfistershammer	P26625	9245
7055	7590	07/24/2006		
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER ROGERS, KRISTIN D	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 07/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/522,580

Applicant(s)

PFISTERSHAMMER, JOSEF

Examiner

Kristin D. Rogers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 11, 2006 have been fully considered but they are not persuasive.
2. The Applicant argues that the references of Hendrikx and Bucalo do not teach, "the sample removal means being provided with an amount of sample preparative or preservative." The Examiner disagrees. As broadly as structurally claimed by the Applicant, the reference of Bucalo teaches as cited the claimed sample removal means provided with an amount of sample preparative or preservative available within the sample receiving space (Figure 7). In view of the claim language and the specification, the Examiner believes that the Bucalo reference meets the limitations of the claim language of claim 23.
3. The Applicant further argues that the references of Hendrikx and Bucalo in view of Molumut are "not properly combinable" because "the present invention uses a porous material over an inlet or outlet of the (sample) chamber, but does not contain both an inlet and outlet for passage of material as does Molumut." The Examiner disagrees. As stated by Applicant, the porous material can be placed over an inlet or outlet. The Molumut reference teaches both, which includes the porous material over an inlet or an outlet. In view of the claim language, the Examiner believes that the combination of references is proper and meets the limitations of the claim language of claim 28.
4. The Examiner acknowledges the cancellation of claims 40-42.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 23-27, 29-34 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx (EP 1060662) in view of Bucalo (5267572). In regard to claim 23, Hendrikx shows a sampling device characterized by a male portion 1 with a base 3, cylindrical sample removal means 6, female portion 9 with base portion above 8, sample container 17 and sample receiving space 7. Hendrikx lacks a sample preparative/preservative within the sample removal means sample receiving space. Bucalo teaches sampling instrument 20, comprising a cylindrical sample removal means 15 with preservative liquid 27 in sample receiving space 26 for the purpose of preparing and preserving the biological tissue specimen (Figure 7). In regard to claim 24, Hendrikx shows male 1 base portion 3 and upstanding member 2 with annular lip 14. In regard to claim 25, Hendrikx shows sample removal means 6 positively located on the upstanding member 2. In regard to claim 26, Hendrikx shows a cylindrical cutter with cutting edge 6, thrust member with cutting edge 5 received in bore of cutter 6 (Figure 1) and seat 4. In regard to claim 27, Hendrikx shows thrust member 5 that further defines the sample receiving chamber 7. In regard to claim 29, Hendrix shows thrust member with cutting edge 5 engaged within the bore 6. In regard to claim 30, Hendrikx shows cutter means 6 is tapered from lower end to upper end. In regard to claim 31, Hendrikx

shows the sample container 17 is tapered broader at an open lower end than it is at the upper end (Figure 2). In regard to claim 32, Hendrikx shows a female base portion 8 provided with a frangible portion 12 for receiving the male member. In regard to claim 33, Figures 2-4 of Hendrikx show the open lower end of the sample container 17 releasably retained with the upstanding collar 16 of female portion by cap 15; sample container is received through an aperture provided by cap 15; and sample container 17 and sample removal means 6 are detachable (column 2, paragraphs 10-11 and 14). In regard to claim 34, it is noted that the cylindrical cutter means 6 of Hendrikx is capable of obtaining a "ring of resilient material" captured within the upstanding collar 16 and cap 15 (Figure 4). In regard to claim 38 and 39, Hendrikx provides a sampling device wherein the male and female portions having matching identification, holographic images at snap-fit joint of the female and male base portions (column 2, paragraph 13 and column 4 paragraph 36). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx with a sample preparative/preservative within the sample removal means sample receiving space as taught by Bucalo since such modification would maintain the integrity of a biological sample for future experimental analysis.

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx (EP 1060662) in view of Bucalo (5267572) as applied to claim 27 above and in further view of Molomut et al. (3224434). Hendrikx shows a sampling device including a sample receiving chamber 7 and Bucalo teaches a sampling instrument 20 including a preservative liquid 27, equivalent of a granular preservative, in sample receiving space

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26 for the purpose of preparing and preserving the biological tissue specimen, as set forth above. Hendrikx and Bucalo lack a sheet of porous material. Molomut et al. teaches a sampling device with a porous mesh collecting means 20 between the receiving space between the male and female sample space for retaining. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx a preservative solution and porous sheet as taught by Bucalo and Molomut et al. for the purpose of providing a means for retaining the preservative in the sample receiving space.

8. Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx in view of Bucalo as applied to claim 23 above, and further in view of Ritchey (6145225). Hendrikx shows a sampling device as set forth above. Hendrikx lacks a transponder. In regard to claim 35, Ritchey teaches an animal ear tag assembly that comprises a transponder (column 3, lines 37-40) for identification. In regard to claim 36, Ritchey teaches separate transponder 80 provided associated with the base members 40 and 30 of female portion 12. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hendrikx with a transponder as taught by Ritchey for the purpose of providing identification and tracking means.

9. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrikx in view of Bucalo and Ritchey as applied to claim 36 above, and further in view of Black (6239737). Hendrikx shows a sampling device including a female base portion 9 as set forth above. Hendrikx lacks a transponder sandwiched between female base members. Ritchey teaches an animal ear tag assembly transponder 80 provided associated with

the base members 40 and 30 of female portion 12. Ritchey lacks a transponder with an aperture. Black teaches a tagging apparatus comprising a transducer with an aperture 2 (Figure 1) for the purpose of receiving a male member 1 into female member 3. It would have been obvious for one having ordinary skill in the art at the time of the invention to modify Hendrikx with a transponder having an aperture sandwiched by female base members as taught by Ritchey and Black for providing an uninterrupted receiving space for joining the male and female members.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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